

**A&P INVESTORS, INC.**

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July 9, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Re: Restrictions on Over-The-Air Reception Devices, CS Docket No. 96-83; and  
Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59

Dear Mr. Caton:

We write to request clarification regarding the possible effect on our business of the rules proposed in the above dockets. An original and 13 copies of this letter are enclosed for filing in the record. We understand that the proposed rules would invalidate "nongovernmental restrictions" that "impair" a viewer's ability to receive video programming over the air, through a wireless cable or similar system, or by direct broadcast satellite.

A & P Investors, Inc. owns and operates multi-unit, residential apartment buildings. Consequently, we have entered into hundreds of leases with our residents. We are concerned that our leases might contain terms that are "nongovernmental restrictions" that "impair" viewing, but we do not know how the proposed rules would be applied. This uncertainty could very well create unnecessary disputes with our residents.

We would appreciate your guidance in determining which provisions of our lease contain terms that might be considered "nongovernmental restrictions" or "impairments" under the rules you propose in our circumstances.

Accordingly, we enclose a copy of one of our representative lease forms. Please read it and let us know which terms of the enclosed form would violate either of the proposed rules.

Thank you for your assistance.

Sincerely,

  
Janna Colvin  
A & P Investors, Inc.

JC/rs

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MODEL LEASE AGREEMENT

1. Parties and Dwelling Unit:

The parties to this Agreement are \_\_\_\_\_,  
referred to as the Landlord, and \_\_\_\_\_,  
referred to as the Tenant. The Landlord leases to the Tenant unit  
number \_\_\_\_\_, located at \_\_\_\_\_ in the  
project known as .

2. Length of Time (Term):

The initial term of this Agreement shall begin on \_\_\_\_\_ and end  
on \_\_\_\_\_. After the initial term ends, the Agreement will  
continue for successive terms of one \_\_\_\_\_ each unless  
automatically terminated as permitted by paragraph 23 of this  
Agreement.

3. Rent:

The Tenant agrees to pay \$ \_\_\_\_\_ for the partial month ending on  
\_\_\_\_\_. After that, Tenant agrees to pay a rent of \$ \_\_\_\_\_  
per month. This amount is due on the first day of the month at .

The Tenant understands that this monthly rent is less than the market  
(unsubsidized) rent due on this unit. This lower rent is available  
either because the mortgage on this project is subsidized by the  
Department of Housing and Urban Development (HUD) and/or because HUD  
makes monthly payments to the Landlord on behalf of the Tenant. The  
amount, if any, that HUD makes available monthly on behalf of the  
Tenant is called the tenant assistance payment and is shown on the  
"Assistance Payment" line of the Certification and Recertification of  
Tenant Eligibility Form which is Attachment No. 1 to this Agreement.

4. Changes in Tenant's Share of the Rent:

The Tenant agrees that the amount of rent the Tenant pays and/or the  
amount of assistance that HUD pays on behalf of the Tenant may be  
changed during the term of this Agreement if:

- a. HUD or the Contract Administrator (such as a Public Housing  
Agency) determines, in accordance with HUD procedures, that an  
increase in rents is needed;
- b. HUD or the Contract Administrator changes any allowance for  
utilities or services considered in computing the Tenant's share of  
the rent;
- c. the income, the number of persons in the Tenant's household or  
other factors considered in calculating the Tenant's rent change and  
HUD procedures provide that the Tenant's rent or assistance payment  
be adjusted to reflect the change;
- d. changes in the Tenant's rent or assistance payment are required by  
HUD's recertification or subsidy termination procedures;
- e. HUD's procedures for computing the Tenant's assistance payment or  
rent change; or

f. the Tenant fails to provide information on his/her income, family composition or other factors as required by the Landlord. The Landlord agrees to implement changes in the Tenant's rent or tenant assistance payment only in accordance with the time frames and administrative procedures set forth in HUD's handbook, instructions and regulations related to administration of multi-family subsidy programs. The Landlord agrees to give the Tenant at least 30 days advance written notice of any increase in the Tenant's rent except as noted in paragraphs 11, 15 or 17. The notice will state the new amount the Tenant is required to pay, the date the new amount is effective, and the reasons for the change in rent. The Notice will also advise the Tenant that he/she may meet with the Landlord to discuss the rent change.

#### 5. Charges for Late payments and Returned Checks:

If the Tenant does not pay the full amount of the rent shown in paragraph 3 by the end of the 5th day of the month, the Landlord may collect a fee of \$5 on the 6th day of the month. Thereafter, the Landlord may collect \$1 for each additional day the rent remains unpaid during the month it is due.

The Landlord may not terminate this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of rent, as explained in paragraph 23. The Landlord may collect a fee of \$\_\_\_\_\_ on the second or any additional time a check is not honored for payment (bounces). The charges discussed in this paragraph are in addition to the regular monthly rent payable by the Tenant.

#### 6. Condition of Dwelling Unit:

By signing this Agreement, the Tenant acknowledges that the unit is safe, clean and in good condition. The Tenant agrees that all appliances and equipment in the unit are in good working order, except as described on the Unit Inspection Report which is Attachment No. 2 to this Agreement. The Tenant also agrees that the Landlord has made no promises to decorate, alter, repair or improve the unit, except as listed on the Unit Inspection Report.

#### 7. Charges for Utilities and Services:

The following charts describe how the cost of utilities and services related to occupancy of the of the unit will be paid. The Tenant agrees that these charts accurately describe the utilities and services paid by the Landlord and those paid by the tenant.

a. The Tenant must pay for the utilities in column (1). Payments should be made directly to the appropriate utility company. The items in column (2) are included in the Tenant's rent.

(1) Put "x" by any Utility Tenant pays directly -----	Type of Utility -----	(2) Put "x" by any Utility Included in Tenant Rent -----
_____	Heat	_____
_____	Lights,Electric	_____
_____	Cooking	_____
_____	Water	_____
_____	Other (Specify)	_____
_____	_____	_____
_____	_____	_____

b. The Tenant agrees to pay the Landlord the amount shown in column (3) on the date the rent is due. The Landlord certifies that HUD had authorized him/her to collect the type of charges shown in column (3) and that the amounts shown in column (3) do not exceed the amounts authorized by HUD.

	(3) Show \$ Amount Tenant Pays to Landlord in Addition to Rent
Parking	\$ _____
Other (Specify.)	\$ _____
_____	\$ _____
_____	\$ _____

8. Security Deposits:

The Tenant has deposited \$\_\_\_\_\_ with the Landlord. The Landlord will hold this security deposit for the period the Tenant occupies the unit. After the Tenant has moved from the unit, the Landlord will determine whether the Tenant is eligible for a refund of any or all of the security deposit. The amount of the refund will be determined in accordance with the following conditions and procedures.

a. The Tenant will be eligible for a refund of the security deposit only if the Tenant provided the Landlord with the 30-day written notice of intent to move required by paragraph 23, unless the Tenant was unable to give the notice for reasons beyond his/her control.

b. After the Tenant has moved from the unit, the Landlord will inspect the unit and complete another Unit Inspection Report. The Landlord will permit the Tenant to participate in the inspection, if the Tenant so requests.

c. The Landlord will refund to the Tenant the amount of the security

deposit [plus interest computed at \_\_\_\_\_%, beginning \_\_\_\_\_]  
, less any amount needed to pay the cost of:

- (1) unpaid rent;
- (2) damages that are not due to normal wear and tear and are not listed on the Unit Inspection Report;
- (3) charges for late payment of rent and returned checks, as described in paragraph 5; and
- (4) charges for unreturned keys, as described in paragraph 9.

d. The Landlord agrees to refund the amount computed in paragraph 8c within \_\_\_\_ days after the Tenant has permanently moved out of the unit, returned possession of the unit to the Landlord, and given his/her new address to the Landlord. The Landlord will also give the Tenant a written list of charges that were subtracted from the deposit. If the Tenant disagrees with the Landlord concerning the amounts deducted and asks to meet with the Landlord, the Landlord agrees to meet with the Tenant and informally discuss the disputed charges.

e. If the unit is rented by more than one person, the Tenants agree that they will work out the details of dividing any refund among themselves. The Landlord may pay the refund to any Tenant identified in Paragraph 1 of this Agreement.

f. The Tenant understands that the Landlord will not count the Security Deposit towards the last month's rent or towards repair charges owed by the Tenant in accordance with paragraph 11.

#### 9. Keys and Locks:

The Tenant agrees not to install additional or different locks or gates on any doors or windows of the unit without the written permission of the Landlord. If the Landlord approves the Tenant's request to install such locks, the Tenant agrees to provide the Landlord with a key for each lock. When this Agreement ends, the Tenant agrees to return all keys to the dwelling unit to the Landlord. The Landlord may charge the Tenant \$ \_\_\_\_ for each key not returned.

#### 10. Maintenance:

a. The Landlord agrees to:

- (1) regularly clean all common areas of the project;
- (2) maintain the common areas and facilities in a safe condition;
- (3) arrange for collection and removal of trash and garbage;
- (4) maintain all equipment and appliances in safe and working order;
- (5) make necessary repairs with reasonable promptness;
- (6) maintain exterior lighting in good working order;

(7) provide extermination services, as necessary; and

(8) maintain grounds and shrubs.

b. The Tenant agrees to:

(1) keep the unit clean;

(2) use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;

(3) not litter the grounds or common areas of the project;

(4) not destroy, deface, damage or remove any part of the unit, common areas, or project grounds;

(5) give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment or any other part of the unit or related facilities; and

(6) remove garbage and other waste from the unit in a clean and safe manner.

#### 11. Damages:

Whenever damage is caused by carelessness, misuse, or neglect on the part of the Tenant, his/her family or visitors, the Tenant agrees to pay:

a. the cost of all repairs and do so within 30 days after receipt of the Landlord's demand for the repairs charges; and

b. rent for the period the unit is damaged whether or not the unit is habitable. The Tenant understands that HUD will not make assistance payments for any period in which the unit is not habitable. For any such period, the Tenant agrees to pay the HUD-approved market rent rather than the Tenant rent shown in paragraph 3 of this agreement.

#### 12. Restrictions on Alterations:

The Tenant agrees not to do any of the following without first obtaining the Landlord's written permission:

a. change or remove any part of the appliances, fixtures or equipment in the unit;

b. paint or install wallpaper or contact paper in the unit;

c. attach awnings or window guards in the unit;

d. attach or place any fixtures, signs, or fences on the buildings(s), the common areas, or the project grounds;

e. attach any shelves, screen doors, or other permanent improvements in the unit;

f. install washing machines, dryers, fans, heaters or air

conditioners in the unit; or

g. place any aerials, antennas or other electrical connections on the unit.

13. General Restrictions:

The Tenant must live in the unit and the unit must be the Tenant's only place of residence. The Tenant shall use the premises only as a private dwelling for himself/herself and the individuals listed on the Certification and Recertification of Tenant Eligibility. The Tenant agrees to permit other individuals to reside in the unit only after obtaining the prior written approval of the Landlord. The Tenant agrees not to:

- a. sublet or assign the unit, or any part of the unit;
- b. use the unit for unlawful purposes;
- c. engage in or permit unlawful activities in the unit, in the common areas or on the project grounds;
- d. have pets or animals of any kind in the unit without the prior written permission of the Landlord; or
- e. make or permit noises or acts that will disturb the rights or comfort of neighbors. The Tenant agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors.

14. Rules:

The Tenant agrees to obey the House rules which are Attachment No. 3 to this Agreement. The Tenant agrees to obey additional rules established after the effective date of this Agreement if;

- a. the rules are reasonably related to the safety, care and cleanliness of the building and the safety, comfort and convenience of the Tenants; and
- b. the Tenant receives written notice of the proposed rule at least 30 days before the rule is enforced.

15. Regularly Scheduled Recertifications:

Every year around the first day of \_\_\_\_\_, the Landlord will request the Tenant to report the income and composition of the Tenant's household and to supply any other information required by HUD for the purposes of determining the Tenant's rent and assistance payment, if any. The Tenant agrees to provide accurate statements of this information and to do so by the date specified in the Landlord's request. The Landlord will verify the information supplied by the Tenant and use the verified information to recompute the amount of the Tenant's rent and assistance payment, if any.

- a. If the Tenant does not submit the required recertification information by the date specified in the Landlord's request, the Landlord may impose the following penalties. The Landlord may

implement these penalties only in accordance with the administrative procedures and time frames specified in HUD's regulations, handbooks and instructions related to the administration of multi-family subsidy programs.

(1) Require the Tenant to pay the higher, HUD-approved market rent for the unit.

(2) Implement any increase in rent resulting from the recertification processing without providing the 30-day notice otherwise required by paragraph 4 of this Agreement.

b. The Tenant may request to meet with the Landlord to discuss any change in rent or assistance payment resulting from the recertification processing. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and discuss how the Tenant's rent and assistance payment, if any, were computed.

16. Reporting Changes Between Regularly Scheduled Recertifications:

a. If any of the following changes occur, the Tenant agrees to advise the Landlord immediately.

(1) Any household member moves out of the unit.

(2) An adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.

(3) the household's income cumulatively increases by \$40 or more a month.

b. The Tenant may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the Landlord has confirmation that the decrease in income or change in other factors will last less than one month, the Landlord will verify the information and make the appropriate rent reduction. However, if the Tenant's income will be partially or fully restored within two months, the Landlord may delay the certification process until the new income is known, but the rent reduction will be retroactive and the Landlord may not evict the Tenant for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The Tenant has thirty days after receiving written notice of any rent due for the above described time period to pay or the Landlord can evict for nonpayment of rent. (Revised 03/22/89)

c. If the Tenant does not advise the Landlord of these interim changes, the Landlord may increase the Tenant's rent to the HUD - approved market rent. The Landlord may do so only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.

d. The Tenant may request to meet with the Landlord to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and explain how the

Tenant's rent or assistance payment, if any, was computed.

17. Removal of Subsidy:

a. The Tenant understands that assistance made available on his/her behalf may be terminated if events in either items 1 or 2 below occur. Termination of assistance means that the Landlord may make the assistance available to another Tenant and the Tenant's rent will be recomputed. In addition, if the Tenant's assistance is terminated because of criterion (1) below, the Tenant will be required to pay the HUD-approved market rent for the unit.

(1) The Tenant does not provide the Landlord with the information or reports required by paragraph 15 or 16 within 10 calendar days after receipt of the Landlord's notice of intent to terminate the Tenant's assistance payment.

(2) The amount the Tenant would be required to pay towards rent and utilities under HUD rules and regulations equals the Family Gross Rent shown on Attachment 1.

b. The Landlord agrees to give the Tenant written notice of the proposed termination. The notice will advise the Tenant that, during the ten calendar days following the date of the notice, he/she may request to meet the Landlord to discuss the proposed termination of assistance. If the Tenant requests a discussion of the proposed termination, the Landlord agrees to meet with the Tenant.

c. Termination of assistance shall not affect the Tenant's other rights under this Agreement, including the right to occupy the unit. Assistance may subsequently be reinstated if the Tenant submits the income or other data required by HUD procedures, the Landlord determines the Tenant is eligible for assistance, and assistance is available.

18. Tenant Obligation to Repay:

If the Tenant submits false information on any application, certification or request for interim adjustment or does not report interim changes in family income or other factors as required by paragraph 16 of this Agreement, and as a result, is charged a rent less than the amount required by HUD's rent formulas, the Tenant agrees to reimburse the Landlord for the difference between the rent he/she should have paid and the rent he/she was charged. The Tenant is not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow HUD's procedures for computing rent or assistance payments.

19. Size of Dwelling:

The Tenant understands that HUD requires the Landlord to assign units according to the size of the household and the age and sex of the household members. If the Tenant is or becomes eligible for a different size unit, and the required size unit becomes available, the Tenant agrees to:

a. move within 30 days after the Landlord notifies him/her that a

unit of the required size is available within the project; or

b. remain in the same unit and pay the HUD-approved market rent.

#### 20. Access by Landlord:

The Landlord agrees to enter the unit only during reasonable hours, to provide reasonable advance notice of his/her intent to enter the unit, and to enter the unit only after receiving the Tenant's consent to do so, except when emergency situations make such notices impossible or except under paragraph (c) below.

a. The Tenant agrees to permit the Landlord, his/her agents or other persons, when authorized by the Landlord, to enter the unit for the purpose of making reasonable repairs and periodic inspections.

b. After the Tenant has given a notice of intent to move, the Tenant agrees to permit the Landlord to show the unit to prospective tenants during reasonable hours.

c. If the Tenant moves before this Agreement ends, the Landlord may enter the unit to decorate, remodel, alter or otherwise prepare the unit for re-occupancy.

#### 21. Discrimination Prohibited:

The Landlord agrees not to discriminate based upon race, color, religion, creed, national origin, sex, age, handicap, membership in a class, such as unmarried mothers or recipients of public assistance, or because there are children in the family.

#### 22. Change in Rental Agreement:

The Landlord may, with the prior approval of HUD, change the terms and conditions of this Agreement. Any changes will become effective only at the end of the initial term or a successive term. The Landlord must notify the Tenant of any change and must offer the Tenant a new Agreement or an amendment to the existing Agreement. The Tenant must receive the notice at least 60 days before the proposed effective date of the change. The Tenant may accept the changed terms and conditions by signing the new Agreement or the amendment to the existing Agreement and returning it to the Landlord.

The Tenant may reject the changed terms and conditions by giving the Landlord written notice that he/she intends to terminate the tenancy.

The Tenant must give such notice at least 30 days before the proposed change will go into effect. If the Tenant does not accept the amended agreement, the Landlord may require the Tenant to move from the project, as provided in paragraph 23.

#### 23. Termination of Tenancy:

a. To terminate this Agreement, the Tenant must give the Landlord 30-days written notice before moving from the unit. If the Tenant does not give the full 30-day notice, the Tenant shall be liable for rent up to the end of the 30 days for which notice was required or to the date the unit is re-rented whichever date comes first.

b. Any termination of this Agreement by the Landlord must be carried

out in accordance with HUD regulations, State and local law, and the terms of this Agreement. The Landlord may terminate this Agreement only for:

- (1) the Tenant's material noncompliance with the terms of this Agreement;
- (2) the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act; or
- (3) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control; or
- (4) other good cause, which includes but is not limited to the Tenant's refusal to accept the Landlord's proposed change to this Agreement. Terminations for "other good cause" may only be effective as of the end of any initial or successive term.

The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that: (a) disrupt the livability of the project, (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project; (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), or to knowingly provide incomplete or inaccurate information; and (4) non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

c. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice of the proposed termination.

If the Landlord is terminating this agreement for "other good cause", the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

- (1) specify the date this Agreement will be terminated;
- (2) state the grounds for termination with enough detail for the Tenant to prepare a defense;

(3) advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and

(4) advise the Tenant of his/her right to defend the action in court.

d. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph (c).

#### 24. Hazards:

The Tenant shall not undertake, or permit his/her family or guests to undertake, any hazardous acts or do anything that will increase the project's insurance premiums. Such action constitutes a material non-compliance. If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.

#### 25. Penalties for Submitting False Information:

Knowingly giving the Landlord false information regarding income or other factors considered in determining Tenant's eligibility and rent is a material noncompliance with the lease subject to termination of tenancy. In addition, the Tenant could become subject to penalties available under Federal law. Those penalties include fines up to \$10,000 and imprisonment for up to five years.

#### 26. Contents of this this Agreement:

This Agreement and its Attachments make up the entire agreement between the Landlord and the Tenant regarding the unit. If any Court declares a particular provision of this Agreement to be invalid or illegal, all other terms of this Agreement will remain in effect and both the Landlord and the Tenant will continue to be bound by them.

The Tenant certifies that he/she has received a copy of this Agreement and the following Attachments to this Agreement and understands that these Attachments are part of this Agreement.

- 28. Signatures:**

1. \_\_\_\_\_ Date Signed \_\_\_\_\_

2. \_\_\_\_\_ Date Signed \_\_\_\_\_

3. \_\_\_\_\_ Date Signed \_\_\_\_\_

4. \_\_\_\_\_ Date Signed \_\_\_\_\_

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date Signed